

chapter 14

Floodplain Management



Floodplain Management

Program Assistance

Air Regulations - For questions on air regulations, compliance inspections or enforcement actions, contact your Region Office Air Program Manager (refer to Chapter 1).

Flood Insurance - For information on the National Flood Insurance Program (NFIP), call the Federal Emergency Management Agency (FEMA) at 817/898-5127.

Levee Districts - For assistance with the creation of a levee district, call Water Districts at 512/239-6167.

NFIP Community Assistance or Floodplain Construction - For assistance with the NFIP, to schedule a community assessment visit or a floodplain management workshop, or to evaluate a floodplain project in a non-NFIP area, call the TNRCC Flood Management Section at 512/239-4730

Federal, State, and Local Authority

Federal

The NFIP is administered by FEMA, which prepares flood insurance rate maps to identify special flood hazard areas, and assists with the development of flood insurance rate schedules for communities participating in the NFIP. The NFIP also requires FEMA to establish building standards (elevation, location, living space requirements, etc.) to minimize property losses in the event of flooding.

State

TNRCC acts as an agent of FEMA. The Flood Management Section assists communities with the development and maintenance of their floodplain management programs and reports to FEMA on local activities. The Flood Management Section conducts community assessment visits to NFIP participants at least once every five years, and floodplain management workshops upon request.

Local

Local communities that participate in the NFIP must sign an agreement to establish a sound floodplain management program in order to be eligible for flood insurance. The local floodplain management program must include a permitting and inspection system that adheres to the NFIP regulations.

Program Requirements

There are three floodplain management options available to Texas communities: the NFIP, which provides flood insurance; Levee Improvement Districts (LIDs), whose plans are approved by TNRCC; and communities that require TNRCC approval for any floodplain activity.

There may also be specific air regulations that affect construction activities in the floodplain. For more information on air regulations, contact the Air Program Manager at your TNRCC Region Office (refer to Chapter 1).

National Flood Insurance Program (NFIP)

The process for participating in the NFIP is relatively simple. A community must either adopt an ordinance (for cities) or a court order (for counties) stating that the community will regulate any activity in an identified flood hazard area. The court order or ordinance designates a floodplain administrator, who is responsible for managing this program.

The community also agrees to establish a sound floodplain management program that includes a permitting and inspection system developed in accordance with NFIP building standards. Any construction or development in the identified flood hazard area must receive a development permit and comply with program inspections. NFIP building standards require that all residential structures must be at an elevation equal to or above the 100-year flood level. Non-residential structures that are below the 100-year flood level must be dry floodproofed up to or above the base flood elevation (usually the 100-year flood level). It is important to note that “development” includes building and alterations to landscapes (such as excavation or use of fill) that would affect drainage patterns or the flood carrying capacity of the watercourse.

Insurance Definitions

Insurable Structures

Almost every type of walled and roofed building that is principally above ground and not entirely over water may be insured. In most cases, this includes manufactured homes that are anchored to permanent foundations.

Uninsured Structures

Buildings over water or principally below ground, gas or liquid storage tanks, animals, birds, fish, aircraft, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, machinery or equipment in the open, and motor vehicles are not insurable. Also, any building which has been declared by a state or local entity to be in violation of state or local regulations or ordinances is not insurable.

Map Amendments and Revisions

The NFIP also includes review and approval of Letters of Map Amendments (LOMA) and Letters of Map Revisions (LOMR) submitted by citizens or communities participating in the NFIP. These letters request changes in the elevations listed on a flood insurance map, affecting possible construction projects and flood insurance premiums. The fees vary depending on the magnitude of change to the current flood insurance rate map. Requests for revisions or amendments are inspected and verified when FEMA or TNRCC conducts a community assessment visit. Contact FEMA (817/898-5127) for more information on LOMAs, LOMRs, or current fee rates.

NFIP cities with maps are charged by proximity to the floodplain and elevation, with those living on the floodplain paying the highest premiums. NFIP communities that have not been mapped, receive the lowest insurance premiums.

Levee Improvement Districts (LIDs)

A community that does not wish to participate in the federal program may establish a LID, which is authorized to undertake levee construction, stream modifications, and fill placement in the floodplain. TNRCC reviews the Creation Report (the initial feasibility study for a district) and reviews and approves the district's Plan of Reclamation (proposed construction of levees, channels, landfills, etc). Once the Plan of Reclamation has been approved, the district may operate relatively autonomously. Any LID projects that were not included in the original Plan of Reclamation must be submitted to TNRCC for approval. Fees for the review of LID applications are discussed below. For information on creating an LID, contact Water Districts at 512/239-6167.

Non-NFIP Communities

Communities that do not participate in the NFIP, or a LID, are regulated by the Reclamation Engineer Act and must receive approval from TNRCC prior to any construction on the floodplain. For information on building regulations and project application requirements, contact the Flood Management Section at 512/239-4730.

Air Regulations

In addition to the floodplain requirements noted above, a project must also be evaluated for any impact on air quality. No action can legally result in a condition of nuisance smoke, odor, dust or aerosol, cause a traffic hazard, or contribute to a condition of air pollution. Nuisance and traffic conditions are referenced in 30 TAC Chapters 101.4 and 101.5.

Reports

NFIP communities are required to complete a biennial report for recordkeeping purposes. FEMA mails the report form to participating communities.

Fees

A fee is assessed for each project application (non-NFIP, LID) submitted for TNRCC review and approval. The application fees are as follows:

Filing	\$100 per filing
Recording	\$1.25 per page
Notification of Proposed TNRCC Action	\$0.90 per person

The total time to process the application is generally 120 days.

Inspections

A generic description of the inspection process is outlined in Chapter 3. For more detailed information on any aspect of the inspection process, contact the TNRCC Field Operations Division (512/239-0400) or your Region Office (refer to Chapter 1).

NFIP Communities

The local floodplain management program is responsible for reviewing all construction plans and for conducting inspections on approved construction projects.

Non-NFIP Communities

Once TNRCC approves final construction plans and specifications, inspections are conducted bi-monthly by Region Office staff. Monthly construction progress and testing reports are submitted to the TNRCC until construction is completed.

Enforcement

A general description of the TNRCC enforcement process is outlined in Chapter 3. If air quality violations are involved, the process is mandated by state law and differs slightly. The violation is either resolved within 30 days from receipt of a notice of violation (NOV), or the matter is referred to Central Office for formal enforcement proceedings. You are advised to contact your Region Office immediately for information on handling violations or to request technical assistance.

NFIP Communities

The local floodplain management program is responsible for maintaining compliance with NFIP requirements. Good records and active enforcement of the floodplain ordinance are key to maintaining an NFIP floodplain management program. Communities that do not strictly maintain a permit system, that grant variances regularly, or that are lax in their enforcement responsibilities may be dropped from the federal program with the following results:

- ▼ No flood insurance for members of the affected community;
- ▼ No grants or loans for insurable buildings in identified special flood hazard areas that would otherwise be available to a community participating in the NFIP;
- ▼ No federal mortgage insurance available in identified flood hazard areas; and
- ▼ No federal or state disaster assistance to insurable structures in identified flood hazard areas in the event of a federally-declared flood disaster.

Non-NFIP Communities

Individuals who refuse to bring their projects into compliance with the Reclamation Engineer Act or LID Act can be referred to the Attorney General's Office for action. Penalties consist of a \$100 per day fine plus costs to remove or modify the illegal levee.

In Addition

Frequently Asked Questions

What is the initial cost to our community to join the NFIP?

Initial costs include the time required to modify the sample city ordinance or county court order and the sample development permit form supplied with the application form. The county court order or city ordinance designates an official “floodplain administrator”, but the community may hire another person to be the floodplain administrator. That salary needs to be considered.

What does it cost to have the community mapped?

In return for the community regulating its designated flood hazards, FEMA agrees to make flood insurance available to the entire community, and furnish a free map designating all the special flood hazard areas.

Are there continuing costs to communities to remain in the NFIP?

Continuing costs include the time and space required to maintain records of development permits issued, and the time to enforce the local floodplain management program as established by the community. Other investments of time include completion of a biennial report, and updating the community court order or ordinance if/when NFIP regulations change.

Other Assistance

Two possible sources of funding for flood control or hazard mitigation studies/projects are:

Texas Water Development Board
Planning/Regional Planning
P. O. Box 13231
Austin, Texas 78711-1323
Telephone: 512/475-2056

Department of Public Safety
Division of Emergency Management
P. O. Box 4087
Austin, Texas 78773-0001
Telephone: 512/465-2449

Significant Laws and Regulations

The following is a brief summary of the federal and State laws and regulations relating to floodplain development. Please refer to the official rules for specific questions regarding compliance and applicability. The TNRCC publication “Regulatory Resource: (GI-32) contains detailed information about obtaining copies of the Agency’s rules (see Appendix 4). The TNRCC Rules are also accessible from the Agency bulletin board. Refer to OnLine Services in Chapter 2 for more details.

Federal Laws

National Flood Insurance Act of 1968

Flood Protection Act of 1973

National Flood Insurance Reform Act of 1994

These laws established and strengthened the NFIP.

Federal Regulations

44 CFR Chapter 1 Parts 50-79

These regulations provide for the administration and regulation of the NFIP.

State Laws

Texas Flood Control and Insurance Act of 1969, TWC Chapters 16.231-16.236, and 16.311-16.319.

Promotes community participation in the NFIP.

Reclamation Engineer Act (REA) of 1913, TWC Chapter 16.231-16.236

Provides guidance to municipalities not participating in the NFIP when they are constructing projects in the floodplain.

Requires approval of REA projects by TNRCC.

Levee Improvement Districts Act (Laney Act 1918)

Authorizes the regulation of land subject to flooding.

Provides for funding districts that implement plans of reclamation.

State Regulation

31 Texas Administrative Code (TAC) Chapters 301.1 et seq.

Implements the provisions of the State statutes.

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